

**STATE BAR COURT OF CALIFORNIA**  
**HEARING DEPARTMENT – LOS ANGELES**

In the Matter of	)	Case No.: <b>03-C-05219; 03-O-03756</b>
	)	<b>(04-O-11495); 06-O-10738;</b>
	)	<b>06-O-14219 (07-O-10612);</b>
<b>REBECCA AMELIA TAPIA,</b>	)	<b>07-O-14520 (Cons.)</b>
	)	
	)	<b>DECISION AND ORDER SEALING</b>
<b>Member No. 83053,</b>	)	<b>CERTAIN DOCUMENTS</b>
	)	
	)	
<u>A Member of the State Bar.</u>	)	

On December 8, 2003, prior to formal disciplinary charges being filed against her, respondent Rebecca Amelia Tapia (respondent) contacted the State Bar of California's Lawyer Assistance Program (LAP) to assist her with her substance abuse and mental health issues.

On March 30, 2004, a Notice of Hearing on Conviction was filed against respondent in State Bar Court case number 03-C-05219.

Respondent executed a Participation Agreement with the LAP on April 9, 2004.

On May 10, 2004, the Honorable JoAnn M. Remke issued an order referring case number 03-C-05219 to the State Bar Court's Alternative Discipline Program (ADP)<sup>1</sup> before the undersigned judge.

---

<sup>1</sup> At that time, the ADP was referred to as the Pilot Program for Respondents with Substance Abuse or Mental Health Issues.

Respondent executed an amendment to her LAP Participation Agreement in August 2004.

On February 22, 2005, respondent submitted a declaration establishing a nexus between her substance abuse and mental health issues and her misconduct.

The parties entered into a Stipulation Re Facts and Conclusions of Law in March 2006 with respect to case number 03-C-05219 and investigation matters 03-O-03756 and 04-O-11495.

On May 26, 2006, the court lodged its Confidential Statement of Alternative Dispositions and Orders in case number(s) 03-C-05219; 03-O-03756; 04-O-11495, the Contract and Waiver for Participation in the State Bar Court's ADP (Contract),<sup>2</sup> and the parties' Stipulation Re Facts and Conclusions of Law, and respondent was accepted into the ADP as of this date.

On May 30, 2006, the court issued an order consolidating case numbers 03-C-05219 and 03-O-03756 (04-O-11495).

The State Bar of California, Office of the Chief Trial Counsel (State Bar), filed a Notice of Disciplinary Charges (NDC) against respondent in case number 06-O-10738 on September 11, 2007 and in case numbers 06-O-14219 (07-O-10612) on September 15, 2008.

In late October 2008, the parties executed a Stipulation Re Facts and Conclusions of Law in case number(s) 06-O-10738; 06-O-14219 (07-O-10612). The stipulation was received by the court on October 29, 2008.

Respondent submitted an amended nexus declaration to the court on October 29, 2008, pertaining to case numbers 03-C-05219; 03-O-03756 (04-O-11495); 06-O-10738; 06-O-14219 (07-O-10612) and investigation matter 07-O-14520.

The State Bar filed a NDC against respondent in case number 07-O-14520 on October 30, 2008.

---

<sup>2</sup> The Contract was executed by respondent on May 20, 2006, and by her counsel on May 22, 2006.

In December 2008, the parties executed a Stipulation Re Facts and Conclusions of Law in case number 07-O-14520. The stipulation was received by the court on December 2, 2008.

On March 31, 2009, the Stipulation Re Facts and Conclusions of Law was filed in case number(s) 06-O-10738; 06-O-14219 (07-O-10612) and in case number 07-O-14520. Also on March 31, 2009, the court lodged its Amended Confidential Statement of Alternative Dispositions and Orders and an Agreement and Order Amending Contract and Waiver for Participation in the State Bar Court's ADP (Amended Contract)<sup>3</sup> in case numbers 03-C-05219; 03-O-03756 (04-O-11495); 06-O-10738; 06-O-14219 (07-O-10612); 07-O-14520.

The court issued an order on May 27, 2009, consolidating case numbers 06-O-10738; 06-O-14219 (07-O-10612) and 07-O-14520 with case number 03-C-05219; 03-O-03756 (04-O-11495).

On June 4, 2009, the court issued an order finding that respondent has successfully completed the ADP. Thereafter, on that same date, the parties' Stipulation Re Facts and Conclusions of Law in case number 03-C-05219; 03-O-03756 (04-O-11495) was filed, and this matter was submitted for decision.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

In this consolidated matter, respondent stipulated that: (1) the facts and circumstances surrounding her convictions, including her willful violation of California Vehicle Code section 23152(a) and the violation of court ordered probation involved other misconduct warranting discipline; (2) she willfully violated rule 4-100(B)(3) of the Rules of Professional Conduct<sup>4</sup> by failing to provide an accounting; (3) she willfully violated rule 3-700(D)(2) by failing to promptly refund any part of a fee paid in advance that had not been earned; (4) she willfully

---

<sup>3</sup> The Amended Contract was executed by respondent and her counsel in March 2009.

<sup>4</sup> Unless otherwise indicated, all further references to rule(s) refer to the Rules of Professional Conduct of the State Bar of California.

violated rule 3-110(A) in two matters by intentionally, recklessly or repeatedly failing to perform legal services with competence; (5) she willfully violated Business and Professions Code section 6068, subdivision (m)<sup>5</sup> by failing to keep a client reasonably informed of significant developments in a matter in which respondent had agreed to provide legal services; and (6) she willfully violated rule 4-100(A) in two matters by commingling her personal funds in a client trust account.

In mitigation, respondent suffered health problems that caused her severe psychological and physical stress; she suffered severe financial losses which resulted in extreme stress; she was severely depressed and undergoing personal difficulties and emotional distress; she displayed spontaneous cooperation and candor with the victims of her misconduct and to the State Bar during disciplinary investigation and proceedings; and respondent's misconduct did not harm her client Elda Sanchez.

In aggravation, respondent has a prior record of discipline. Effective July 27, 1997, respondent received a three-year stayed suspension; three years' probation with 20 months' actual suspension for violating sections 6101 and 6102. In addition, respondent's multiple acts of misconduct were considered an aggravating circumstance.

The parties' stipulations as to facts and conclusions of law, including the court's order approving the stipulations, are attached hereto and hereby incorporated by reference, as if fully set forth herein. The stipulations as to facts and conclusions of law set forth the factual findings, legal conclusions, and aggravating and mitigating circumstances in this consolidated matter.

Supreme Court and Review Department case law establish that extreme emotional difficulties are a mitigating factor where expert testimony establishes that these emotional difficulties were directly responsible for the misconduct, provided that the attorney has also

---

<sup>5</sup> Unless otherwise indicated, all further references to section(s) refer to provisions of the Business and Professions Code.

established, through clear and convincing evidence, that he or she no longer suffers from such difficulties. (*Porter v. State Bar* (1990) 52 Cal.3d 518, 527; *In re Naney* (1990) 51 Cal.3d 186, 197; *In re Lamb* (1989) 49 Cal.3d 239, 246; *In the Matter of Frazier* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 676, 701-702.) However, the Supreme Court has also held that, absent a finding of rehabilitation, emotional problems are not considered a mitigating factor. (*Kaplan v. State Bar* (1991) 52 Cal.3d 1067, 1072-1073; *In re Naney, supra*, 51 Cal.3d at p. 197.)

Furthermore, at the time respondent engaged in her misconduct, she was suffering from a substance abuse issue, and respondent's substance abuse issue directly caused or contributed to the misconduct which forms the basis for this proceeding. Supreme Court case law establishes that an attorney's rehabilitation from alcoholism or other substance abuse problems can be accorded significant weight if it is established that (1) the abuse was addictive in nature; (2) the abuse causally contributed to the misconduct; and (3) the attorney has undergone and meaningful and sustained period of rehabilitation. (*Harford v. State Bar* (1990) 52 Cal.3d 93, 101; *In re Billings* (1990) 50 Cal.3d 358, 367.)

Respondent executed a Participation Agreement with the LAP on April 9, 2004,<sup>6</sup> and an amendment to her Participation Agreement in August 2004. The LAP issued a Certificate of One Year Participation in the Lawyer Assistance Program dated April 27, 2009, which reflects that respondent has complied with requirements set forth in her LAP Participation Agreement for at least one year prior to the date of the certificate, and that during this time period, LAP is not aware of the use of any unauthorized substances. Furthermore, the undersigned Hearing Department Judge was presented with satisfactory evidence from a mental health professional as to respondent's mental health stability.

---

<sup>6</sup> Although respondent executed a LAP Participation Agreement on this date, she initially contacted the LAP on or before December 8, 2003.

Respondent also successfully completed the ADP. Respondent's successful completion of the ADP, which required her successful participation in the LAP, as well as the Certificate of One Year Participation in the Lawyer Assistance Program and the satisfactory evidence presented to the undersigned Hearing Department Judge of respondent's mental health stability, qualify as clear and convincing evidence that respondent no longer suffers from the mental health and substance abuse issues which led to her misconduct. Accordingly, it is appropriate to consider respondent's successful completion of the ADP as a mitigating circumstance in this matter. (Rules Proc. of State Bar, tit. IV, Stds. for Atty. Sanctions for Prof. Misconduct, standard 1.2(e)(iv).)

### **DISCUSSION**

The purpose of State Bar disciplinary proceedings is not to punish the attorney but, rather, to protect the public, to preserve public confidence in the legal profession, and to maintain the highest possible professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111.)

After reviewing respondent's brief on the issue of discipline, which was received by the court on February 10, 2006, and the State Bar's brief on the issue of discipline, which was received by the court on February 15, 2006, and considering the Standards for Attorney Sanctions for Professional Misconduct (standard(s)) and case law cited therein, the parties' stipulation setting forth the facts, conclusions of law, and the aggravating and mitigating circumstances with respect to case number 03-C-05219 and investigation matters 03-O-03756 and 04-O-11495, and respondent's declaration regarding the nexus between her substance abuse and mental health issues and her misconduct, the court advised the parties of the discipline which would be recommended to the Supreme Court if respondent successfully completed the ADP and

the discipline which would be recommended if respondent was terminated from, or failed to successfully complete, the ADP.<sup>7</sup>

In determining the appropriate discipline to recommend in this matter if respondent successfully completed the ADP, the court considered the discipline recommended by the parties, as well as certain standards and case law. Respondent recommended that she receive a reproof or stayed suspension. In contrast, the State Bar recommended, among other things, that respondent receive a nine month actual suspension which would continue until restitution is paid. The court also considered standards 1.3, 1.4, 1.5, 1.6, 1.7(a), 2.2(b), 2.4(b), 2.10 and 3.4 and the case law cited in the parties' discipline briefs, including *Chasteen v. State Bar* (1985) 40 Cal.3d 586, *In re Kelley* (1990) 52 Cal.3d 487, *In the Matter of Lazarus* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 387, *In the Matter of Hanson* (Review Dept. 1994) 2 Cal. State Bar Ct. Rptr. 703, *In the Matter of Trousil* (Review Dept. 1990) 1 Cal. State Bar Ct. Rptr. 229, *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631, and *In the Matter of Lais* (Review Dept. 1998) 3 Cal. State Bar Ct. Rptr. 907.

After agreeing to the discipline which the court would recommend to the Supreme Court if respondent successfully completed or was terminated from, or failed to successfully complete, the ADP, respondent executed the Contract to participate in the ADP; the Contract was lodged with the court; and respondent's period of participation in the ADP commenced.

Thereafter, respondent successfully participated in the ADP and, as set forth in the court's June 4, 2009 order, the court found that respondent has successfully completed the ADP. Accordingly, the court will recommend to the Supreme Court the imposition of the discipline set

---

<sup>7</sup> Although respondent later entered into stipulations as to facts and conclusions of law pertaining to four other matters, leading to her executing an Agreement and Order Amending Contract and Waiver for Participation in the State Bar Court's Alternative Discipline Program and the lodging of an Amended Confidential Statement of Alternative Dispositions and Orders, the recommended discipline for either successful completion of, or termination from or failure to successfully complete, the ADP was not increased or modified in any way.

forth in the court's Amended Confidential Statement of Alternative Dispositions and Orders if respondent successfully completed the ADP.

**RECOMMENDED DISCIPLINE**

**IT IS HEREBY RECOMMENDED** that respondent **REBECCA AMELIA TAPIA**, State Bar Number 83053, be suspended from the practice of law in California for two (2) years, that execution of that period of suspension be stayed, and that she be placed on probation for a period of five (5) years subject to the following conditions:

1. Respondent Rebecca Amelia Tapia is suspended from the practice of law for the first four (4) months of probation.<sup>8</sup>
2. Respondent Rebecca Amelia Tapia must also comply with the following additional conditions of probation:
  - a. During the probation period, respondent must comply with the provisions of the State Bar Act and the Rules of Professional Conduct of the State Bar of California;
  - b. Within ten (10) days of any change, respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California (Office of Probation), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code;
  - c. Within thirty (30) days after the effective date of discipline, respondent must contact the Office of Probation and schedule a meeting with respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, respondent must meet with the probation deputy either in person or by telephone. During the period of probation, respondent must promptly meet with the probation deputy as directed and upon request;
  - d. Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10 and October 10 of the period of probation. Under penalty of perjury, respondent must state whether respondent has complied with the State Bar Act, the Rules of Professional Conduct and all conditions of probation during the preceding

---

<sup>8</sup> The probation period will commence on the effective date of the Supreme Court order imposing discipline in this matter. (See Cal. Rules of Court, rule 9.18.)



calendar quarter. Respondent must also state whether there are any proceedings pending against her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than thirty (30) days, that report must be submitted on the next quarter date, and cover the extended period;

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of the probation period;

- e. Subject to the assertion of applicable privileges, respondent must answer fully, promptly and truthfully, any inquiries of the Office of Probation which are directed to respondent personally or in writing relating to whether respondent is complying or has complied with the probation conditions;
- f. Within one (1) year of the effective date of the discipline herein, respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the State Bar Ethics School, and passage of the test given at the end of that session;
- g. Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation;
- h. Respondent must comply with all provisions and conditions of her Participation Agreement with the Lawyer Assistance Program (LAP) and must provide the Office of Probation with certification of completion of the LAP. Respondent must immediately report any non-compliance with any provision(s) or condition(s) of her Participation Agreement to the Office of Probation. Respondent must provide an appropriate waiver authorizing the LAP to provide the Office of Probation and this court with information regarding the terms and conditions of respondent's participation in the LAP and her compliance or non-compliance with LAP requirements. Revocation of the written waiver for release of LAP information is a violation of this condition. Respondent will be relieved of this condition upon providing to the Office of Probation satisfactory certification of completion of the LAP;
- i. Respondent must pay to Noriaki Kunitomo, interest on the principal amount of \$4,800 at the rate of ten percent (10%) per annum from March 19, 2003 (or reimburse the Client Security Fund, to the extent of any payment from the fund to Noriaki Kunitomo, in accordance with Business and Professions Code section 6140.5) and furnish satisfactory proof to the State Bar's Office of Probation in Los Angeles. Any restitution to the

Client Security Fund is enforceable as provided in Business and Professions Code section 6140.5, subdivision (c) and (d);

With each written quarterly report required herein, respondent must provide to the Office of Probation satisfactory proof of all restitution payments made by her during that quarter or applicable reporting period;

To the extent that respondent has paid any restitution prior to the effective date of the Supreme Court's final disciplinary order in this proceeding, respondent will be given credit for such payments provided satisfactory proof of such is or has been shown to the Office of Probation;

j. Reporting Requirements:

A. If respondent possesses client funds at any time during the period covered by a required quarterly report, respondent will file with each required report a certificate from a certified public accountant or other financial professional approved by the Office of Probation (accountant's certificate), certifying that: respondent has maintained a bank account in a bank authorized to do business in the State of California, at a branch located within the State of California, and that such account is designated as a "Trust Account" or "Client's Funds Account"; and respondent has kept and maintained the following:

- i. a written ledger for each client on whose behalf funds are held that sets forth:
  1. the name of such client,
  2. the date, amount, and source of all funds received on behalf of such client,
  3. the date, amount, payee and purpose of each disbursement made on behalf of such client, and
  4. the current balance for such client;
- ii. a written journal for each client trust fund account that sets forth:
  1. the name of such account,
  2. the date, amount, and client affected by each debit and credit, and
  3. the current balance in such account;
- iii. all bank statements and canceled checks for each client trust account; and
- iv. each monthly reconciliation (balancing) of (i), (ii), and (iii) above, and if there are any differences between the monthly

total balances reflected in (i), (ii), and (iii) above, the reason for the differences, and that respondent has maintained a written journal of securities or other properties held for a client that specifies:

1. each item of security and property held;
2. the person on whose behalf the security or property is held;
3. the date of receipt of the security or property;
4. the date of distribution of the security or property, and
5. the person to whom the security or property was distributed.

B. If respondent does not possess any client funds, property or securities during the entire period covered by a report, respondent must so state under penalty of perjury in the report filed with the Office of Probation for that reporting period. In this circumstance, respondent need not file the accountant's certificate described above;

C. The requirements of this condition are in addition to those set forth in rule 4-100 of the Rules of Professional Conduct of the State Bar of California;

k. Within one (1) year after the effective date of the discipline herein, respondent must supply to the Office of Probation satisfactory proof of attendance at a session of the Ethics School Client Trust Accounting School, within the same period of time, given periodically by the State Bar at either 180 Howard Street, San Francisco, California, 94105-1639, or 1149 South Hill Street, Los Angeles, California, 90015, and passage of the test given at the end of that session. Arrangements to attend Ethics School Client Trust Accounting School must be made in advance by calling (213) 765-1287, and paying the required fee. This requirement is separate from any Minimum Continuing Legal Education (MCLE) requirement, and respondent will not receive MCLE credit for attending Trust Accounting School. (Rules Proc. of State Bar, rule 3201); and

l. No later than nine (9) months prior to the expiration of her probation, respondent must provide proof, in the form of a confirmed copy of a Satisfaction of Judgment, of full payment of the judgment in the case of *Estate of Barbara Hindry, deceased*, Los Angeles Superior Court Case No. BP039801 (probate) or provide proof that she has successfully vacated the judgment. In the event respondent, through negotiations with County Counsel and the Estate of Barbara Hindry obtains an agreement by the parties for payment of a reduced amount, respondent must provide the Office of Probation with proof of said agreement, as well as proof that she

has completed payment of the compromised amount no later than nine (9) months prior to the expiration of her probation;

In the event that additional time is needed to complete payment of the judgment in either the full or compromised amount based on financial inability or other good cause, respondent understands that she has the right to file a Motion for Modification of Probation pursuant to Rules of Procedure of the State Bar of California, rule 550 et seq.

3. At the expiration of the period of probation, if Rebecca Amelia Tapia has complied with all conditions of probation, the two (2) year period of stayed suspension will be satisfied and that suspension will be terminated.

It is also recommended that Rebecca Amelia Tapia take and pass the Multistate Professional Responsibility Examination (MPRE) within one year after the effective date of the Supreme Court's disciplinary order in this matter and provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles. Failure to do so may result in an automatic suspension. (Cal. Rules of Court, rule 9.10(b).)

It is further recommended that Rebecca Amelia Tapia comply with rule 9.20 of the California Rules of Court and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's disciplinary order in this matter. Failure to do so may result in disbarment or suspension.

### **COSTS**

It is recommended that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

### **DIRECTION RE DECISION AND ORDER SEALING CERTAIN DOCUMENTS**

The court directs a court case administrator to file this Decision and Order Sealing Certain Documents. Thereafter, pursuant to rule 806(c) of the Rules of Procedure of the State

Bar of California (Rules of Procedure), all other documents not previously filed in this matter are ordered sealed pursuant to rule 23 of the Rules of Procedure.

It is further ordered that protected and sealed material will only be disclosed to: (1) parties to the proceeding and counsel; (2) personnel of the Supreme Court, the State Bar Court and independent audiotape transcribers; and (3) personnel of the Office of Probation when necessary for their duties. Protected material will be marked and maintained by all authorized individuals in a manner calculated to prevent improper disclosure. All persons to whom protected material is disclosed will be given a copy of this order sealing the documents by the person making the disclosure.

**IT IS SO ORDERED.**

Dated: August 28, 2009

---

RICHARD A. HONN  
Judge of the State Bar Court